

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

Oscar Lee Sykes, #138335;)	C/A No. 4:05-1005-RBH
)	
Plaintiff,)	
)	
vs.)	ORDER
)	
State of South Carolina; Time Meacham,)	
Solicitor, professionally and individually;)	
and Heather Tola, Solicitor, professionally)	
and individually,)	
)	
Defendants.)	
)	

Plaintiff, proceeding *pro se*, brings this action pursuant to 42 U.S.C. § 1983. Plaintiff is a detainee at the Horry County Detention Center and files this action *in forma pauperis* under 28 U.S.C. § 1915. The complaint names as defendants the State of South Carolina and two Assistant Solicitors involved in the prosecution of Plaintiff's pending criminal case. Plaintiff claims "he has been denied procedural due process of the fifth and fourteenth amendment, when he was force[d] by order to undergo a [mental] competency and criminal responsibility evaluation" by the defendants. Complaint at 3. Plaintiff requests monetary damages from the defendants.

In accordance with 28 U.S.C. § 636(b)(1)(B) and Local Rule 73.02, D.S.C., this matter was referred to United States Magistrate Thomas E. Rogers, III, for a Report and Recommendation. The Magistrate Judge filed a Report and Recommendation on April 19, 2005 in which he recommended that this case be dismissed *without prejudice* and without issuance and service of process and that dismissal of this case be deemed a strike pursuant to 28 U.S.C. §§ 1915(e)(2) and (g). Plaintiff filed no objections to the Report and Recommendation.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility for making a final determination remains with this court. *Mathews v. Weber*, 423 U.S. 261, 270 (1976). The Court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or may recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1). In the absence of objections to the Report, this Court is not required to give any explanation for adopting the recommendation. *Camby v. Davis*, 718 F.2d 198, 199 (4th Cir. 1983).

The Court has reviewed the Report, pleadings, and applicable law. The Court adopts the Report and Recommendation and incorporates it herein by reference. The case is **DISMISSED** *without prejudice* and without issuance and service of process. Additionally, the Court finds that dismissal of this case should be deemed a strike pursuant to 28 U.S.C. §§ 1915(e)(2) and (g).

IT IS SO ORDERED.

s/ R. Bryan Harwell
R. Bryan Harwell
United States District Judge

May 11, 2005
Florence, SC